



NSTAR Electric

HEARING OFFICER RULING ON
MOTION OF WESTERN MASSACHUSETTS INDUSTRIAL CUSTOMER GROUP
TO MODIFY THE PROCEDURAL SCHEDULE

In this proceeding, the Department will investigate the proposed tariffs in order to ensure that the Companies used an appropriate method for the calculation of standby or back up-rates for customers who have their own on-site, self-generation facilities. In particular, the Department will investigate, among other things, whether: (1) the proposed standby rates ensure that customers with

their own on-site, self-generation facilities pay an appropriate share of distribution system costs; (2) distribution companies should recover their costs through fixed or variable charges; (3) standby rates should reflect embedded and/or incremental costs; and (4) distribution companies should offer firm and non-firm standby service.

On February 10, 2004, the Department conducted a public hearing and procedural conference. The Attorney General of the Commonwealth (“Attorney General”) intervened pursuant to G.L. c. 12, § 11E. The Department granted full intervenor status to the following entities: Associated Industries of Massachusetts; the Boston Public Schools; Co-Energy America, Inc.; the Conservation Law Foundation, Inc.; the Division of Energy Resources; FuelCell Energy, Inc.; Fitchburg Gas and Electric Light Company; Low Income Weatherization and Fuel Assistance Network and Mass Community Action Program Directors Association; Massachusetts Electric Company; National Association of Energy Service Companies, Inc.; the NE DG Coalition¹; the Solar Energy Business Association of New England; Siemens Building Technologies, District One; The Energy Consortium; UTC Power, LLC; Western Massachusetts Electric Company; the Western Massachusetts Industrial Customer Group. The Department also granted limited participant status to the following entities: Allied Utility Network, LLC; the E-Cubed Company, L.L.C.; Dgsolutions LLC; Energy Concepts Engineering, PC; Keyspan Energy Delivery New England; Pace Law School Energy Project; Plug Power, Inc.; Predicate, LLC; Wyeth Pharmaceutical, Inc; and Constellation NewEnergy, Inc.²

At the procedural conference, the Hearing Officer established a procedural schedule that provided for, among other things:

Discovery on the Companies Filing
Intervenors File Direct Cases

Close March 5, 2004
March 16, 2004

¹ The NE DG Coalition consists of the following companies: American DG, Inc.; Aegis Energy Services, Inc.; OfficePower L.L.C.; Equity Office Properties Trust, Inc.; Northern Power Systems, Inc.; RealEnergy, Inc.; Tecogen Inc.; and Turbosteam Corporation.

² The following entities refer to themselves as the Joint Supporters: Allied Utility Network, LLC; the Boston Public Schools; Co-Energy America, Inc.; The E-Cubed Company, LLC; Dgsolutions, LLC; Energy Concepts Engineering, PC; National Association of Energy Service Companies, Inc.; Pace Law School Energy Project; Predicate LLC; and Siemens Building Technologies, District One.

Discovery on Intervenor Direct Cases	Close March 23, 2004
Companies File Rebuttal Testimony	April 13, 2004
Discovery on Companies Rebuttal Testimony	Close April 20, 2004
Evidentiary Hearings	April 28-30, 2004
	May 3-5, 2004

On February 27, 2004, the Western Massachusetts Industrial Customer Group (“WMICG”) filed with the Department a Motion to Modify Procedural Schedule (the “Motion”), to extend the date for filing of direct cases by intervenors and to provide for the filing of intervenor answering testimony. Responses to the Motion were filed by NSTAR Electric, the Division of Energy Resources (“DOER”), the NE DG Coalition (“NEDGC”), the Joint Supporters, and FuelCell Energy, Inc. (“FCE”).

II. THE MOTION

By its Motion, WMICG requests that the date for intervenors to file their direct cases be extended from March 16, 2003 to March 23, 2004 (Motion at 2). WMICG also requests that the procedural schedule be modified to provide for the filing of intervenor answering testimony on April 13, 2004 (id.). WMICG further requests that the date for the Companies to file rebuttal testimony be extended to April 20, 2004 (id.). WMICG proposes that all other dates remain the same (Id.).

In support of its Motion, WMICG states that some or all of the distribution companies that have intervened in this case will file a direct case (id. at 1). WMICG argues that, under the current procedural schedule, the non-utility intervenors will have no opportunity to respond to the direct testimony filed by these other distribution companies (id.). WMICG maintains that it is necessary to review and analyze the responses to discovery issued to NSTAR Electric, which WMICG contends is extensive, to present a full and complete direct case (id. at 2). WMICG asserts that its proposed modifications to the procedural schedule are required to protect the rights of all parties (id.).

III. RESPONSES TO THE MOTION

DOER supports the Motion (DOER Response at 1). DOER contends that, with adherence to the current procedural schedule, DOER and other intervenors will not have an opportunity to respond to statements made by all other intervenors, and the Department will not have all of the information that it should (id.). DOER maintains that the additional time requested by the Motion will provide some further opportunity to review and analyze the substantial discovery responses that are expected (id. at 2).

NEDGC supports the Motion (NEDGC Response at 1).³ NEDGC contends that the current procedural schedule is too aggressive and, if maintained, will result in an incomplete investigation (id.). NEDGC asserts that the issues raised in this proceeding are broad and involve a host of complex issues (id.). NEDGC maintains that there are a large number of intervenors in this case (id.). NEDGC states that all of the other Massachusetts distribution companies have filed notices of intent to file a direct case, and that NEDGC and several other intervenors have filed notices of intent to file a direct case (id.). NEDGC contends that while the intervenors may share some common interest either with NSTAR Electric or the other intervenors, there is a wide disparity of interests that must be addressed to fully consider the issues in this case (id.). NEDGC asserts that the schedule was developed with the requirement that the case be fully tried within approximately four months (id.). NEDGC contends that the current schedule was developed before the full scope of the proceeding was understood by the parties or the Department (id.). NEDGC maintains that it will not have sufficient time to address the testimony of other intervenors (id.). NEDGC further asserts that the requested extension will allow additional time to analyze the documents offered by the Companies in response to information requests (id.12).

The Joint Supporters support the Motion (Joint Supporters Response at 1). The Joint Supporters assert that in light of the significant number of intervenors with varied interests, the volume of discovery, and the policy-setting importance of this proceeding, the modifications sought by the Motion are necessary to ensure a full and complete record and to protect the interests of all parties (id.).

FCE supports the Motion for the reasons stated in the DOER Response and in the Motion (FCE Response at 1).

NSTAR Electric opposes the portion of the Motion to extend the date for intervenors to file their direct cases, but does not oppose the addition of the filing of rebuttal testimony (answering testimony) by intervenors (NSTAR Electric Response at 1). NSTAR Electric agrees to the filing of intervenor rebuttal testimony by April 6, 2004, with NSTAR Electric rebuttal testimony due no later than April 20, 2004 (id. at 2). NSTAR Electric asserts that the intervenor rebuttal testimony must be limited strictly to the rebuttal of direct testimony filed by intervenor electric distribution companies on March 16, 2004 (id. at 2). NSTAR Electric contends that more time for intervenors to prepare rebuttal testimony is unnecessary and inconsistent with the time constraints presented by this proceeding. (id.).

³ On March 3, 2004, NEDGC filed its own Motion to Extend the Time for Discovery of NSTAR Electric. There is a separate ruling on NEDGC's motion.

NSTAR Electric states that it filed its testimony on October 31, 2004 (id.). NSTAR Electric points out that under the existing procedural schedule, intervenors are required to file their direct cases by March 16, 2004, which is more than four months after NSTAR Electric filed its direct case (id.). NSTAR Electric contends that the schedule provides more than enough time for intervenors to prepare their cases (id.). NSTAR Electric asserts that all parties, including counsel for WMICG, participated in the development of the procedural schedule at the procedural conference held on February 10, 2004 (id.). NSTAR Electric states that WMICG did not seek to appeal the procedural schedule established by the Hearing Officer (id. n.1). NSTAR Electric argues that WMICG has failed to demonstrate sufficient reason to change the schedule (id.).

IV. ANALYSIS AND RULING

I do not find that there is sufficient cause to modify the procedural schedule as requested by WMICG. Further, I find that the interests of WMICG do not require a modification to the procedural schedule. In particular, there is insufficient basis to provide additional time for intervenors to file their direct cases. The existing procedural was developed at the February 10th procedural with the involvement of all parties. In fact, counsel for WMICG was present at the procedural conference. Tr. A at 79. No party appealed the procedural schedule established by the Hearing Officer to the Commission. Furthermore, the procedural schedule provides sufficient time for intervenors to prepare their direct cases considering the Department's early identification of the scope of the proceeding and the need to conduct the proceeding in an orderly manner within the statutory 6-month time period. In establishing a procedural schedule for the orderly conduct of an investigation within the six-month time period mandated by the Legislature, the Department balances the rights of the parties, the need to develop a full and complete record, and the requirements for the Department to deliberate the issues and to issue its decision.

Based on the fact that NSTAR Electric's tariffs, testimony, and supporting schedules have been on file with the Department for over four months and the fact that the Department identified the scope of the proceeding on January 20, 2004, I find that additional time for intervenors to prepare their direct cases is not necessary to allow for the full and complete development of a record. There has been reasonable time for parties to consider the issues for preparation of a case within the time requirements of the existing procedural schedule.

I do find that the development of the record would benefit from the opportunity for intervenors to file rebuttal testimony. That is, testimony by an intervenor to answer and/or refute or counteract any of the intervenor direct testimony filed on March 16, 2004. I do not agree with NSTAR Electric that this opportunity should only be for non-utility intervenors to rebut the direct cases of the utility intervenors. All intervenors should have the opportunity to file testimony in rebuttal to the direct case of any other intervenor. As noted by NSTAR

Electric, this intervenor rebuttal testimony is limited to testimony to answer, refute, and counteract the intervenor direct case. Rebuttal testimony may not be used to support or enhance an intervenor's direct case.

Accordingly, the procedural schedule is modified as follows to provide for the filing of rebuttal testimony by intervenors. All other dates in the existing procedural remain unchanged.

<u>DATE</u>	<u>EXPECTED PRODUCT/ACTIVITY</u>
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Thursday, April 8, 2004	Intervenors to file rebuttal testimony
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Wednesday, April 21, 2004	Companies to file rebuttal testimony
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With these modifications to the procedural schedule, time does not permit any provision for discovery on rebuttal testimony. The Hearing and Briefing dates from the procedural schedule set at the February 10th procedural conference remain the same:

April 28-30, 2004 May 3-5, 2004	Evidentiary Hearings
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Tuesday, May 11, 2004	Responses to record requests due (five calendar days from date of request in hearings)
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Wednesday, May 19, 2004	Initial briefs of Intervenors
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Wednesday, June 2, 2004	Initial brief of Companies
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Wednesday, June 9, 2004	Intervenors' reply briefs
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Thursday, June 15, 2004	Companies' reply briefs
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I find that this modified procedural schedule is consistent with the requirements of the Department's Procedural Rules at 220 C.M.R. §§ 1.00 et seq. and the provisions of the State Administrative Procedures Act, G.L. c. 30A, § 11.

Accordingly, the Motion of the Western Massachusetts Industrial Customer Group is DENIED. A new procedural schedule as provided herein is established for the conduct of this proceeding.

Pursuant to 220 C.M.R. § 1.06(6)(d)3, any party may appeal this Ruling to the Commission by the filing of a written appeal no later than March 16, 2004, with any response to an appeal due no later than March 18, 2004.

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John Cope-Flanagan
Hearing Officer

cc: Commission
Mary Cottrell, Secretary
Andrew Kaplan, General Counsel